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EXTRAORDINARY

PART II—Section 3—Sub-section (ii)
PUBLISHED BY AUTHORITY

No. 23] NEW DELHI, THURSDAY, MARCH 13, 1958/PHALGUNA 22, 1879

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 7th March 1958/Phalguna 16, 1879 Saka

S.O. 242.—Whereas the election of Shri Anirudh Sinha as a member of the House of the People from the Madhubani constituency of that House was called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri Suraj Narain Singh, Village Narpot Nagar, P.O. Narpot Nagar, *Via* Sakri, P. S. Madhubani, District Darbhanga;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has in pursuance of the provisions contained in section 108 of the said Act, sent a copy of its order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

IN THE COURT OF SHRI RAMJIVAN SINHA, DISTRICT JUDGE AND MEMBER
ELECTION TRIBUNAL, MUZAFFARPUR

ELECTION PETITION NO. 400 OF 1957

Shri Suraj Narayan Singh—*Petitioner.*

Versus

1. Shri Anirudh Sinha and
2. Shri Bisheshwar Singh—*Respondents.*

Copy of Order No. 28 dated 8th February 1958.

Lawyers for the parties are present. The Election Petition is dismissed as directed by the Hon'ble Court in M.J.C. 523/57 with a consolidated amount of Rs. 200 as costs to be paid by the petitioner to Respondent No. 1. This amount shall be recoverable from the amount of security deposited by the petitioner and the balance of the security deposit shall be refunded to the petitioner.

The 8th February, 1958.

RAMJIVAN SINHA,
Election Tribunal, Muzaffarpur.

ANNEXURE

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL APPELLATE JURISDICTION*The 8th January, 1958*

MISCELLANEOUS JUDICIAL CASE NO. 523 OF 1957

In the matter of an application under Articles 226 and 227 of the Constitution of India.
Shri Anirudha Sinha—*Petitioner.**Versus*The Chief Election Commissioner, Election Commission, New Delhi, and 3 others—*Opposite Party.**For the petitioner:* Messrs. Brajeshwar Prasad Sinha, K. K. Saran and Janardan Prasad Sinha.*For the opposite party:* No one.

PRESENT:

The Hon'ble the Chief Justice. The Hon'ble Mr. Justice Choudhary. One of the Judges of this Court.

RAMASWAMI, C. J. & CHOUDHARY, J.—In this case the petitioner, Shri Anirudha Sinha, has made an application under Article 227 of the Constitution for setting aside the order of the Election Tribunal, Muzaffarpur, dated the 10th September, 1957, holding that the provisions of section 117 of the Representation of the People Act had been substantially complied with and that the petition filed by the opposite party No. 3, Suraj Narayan Singh, was not bad in law for any defect in the deposit.

The objection taken by the petitioner before the Election Tribunal was that the chalan filed by opposite party no. 3 along with the election petition did not show that the deposit was made in favour of the Secretary to the Election Commission and so there was non-compliance with the provisions of section 117 of the Representation of the People Act. It was argued on behalf of the petitioner that the election petition ought, therefore, to be dismissed under the provisions of section 90(3) of the statute. This argument was rejected by the Election Tribunal on the ground that in actual fact the deposit was shown in the books of the Treasury Officer to the credit of the Secretary of the Election Commission and so there was no difficulty to the Election Commission in drawing upon the money in deposit.

In our opinion, the order of the Election Tribunal is not correct in law and there has been no-compliance with the provisions of section 117 of the Representation of the People Act in this case. Precisely the same question was raised in First Appeal 319 of 1957 which was argued before this Bench yesterday and the judgement of which was pronounced this morning. We have discussed the relevant statutory provisions in that case and we have held that the provisions of section 117 of the Representation of the People Act are mandatory in character and the election petition ought to be dismissed for failure to enclose a chalan with the particulars required by that section. The material facts of the present case are exactly similar to those in First Appeal No. 319 of 1957 and for the reasons we have given in that case we hold that the order of the Election Tribunal in the present case also is erroneous in law and the Election Tribunal has no jurisdiction to proceed further with the hearing of the election petition, but should have dismissed the election petition for failure to comply with the provisions of section 117 of the Act.

Therefore, in exercise of our authority under Article 227 of the Constitution, we set aside the order of the Election Tribunal dated the 10th of September, 1957, and order that the election petition filed by opposite party No. 3, Suraj Narayan Singh, should be dismissed for non-compliance with the requirements of section 117 of the Representation of the People Act. We, accordingly, allow this application, but, as there is no appearance on behalf of the opposite party, there will be no order as to costs.

PATNA HIGH COURT,

8th January, 1958.

V. RAMASWAMI.

R. K. CHOUDHARY.

[No. 82/400/57.]

By Order,

S. C. ROY, Secy.